RECENT IMPORTANT DECISIONS

BUILDING RESTRICTIONS—SINGLE PRIVATE DWELLING ON ONE LOT—WHAT IS ONE LOT?—Land was platted into sixty foot lots and conveyed from time to time to various purchasers subject to restriction, *inter alia,* that "There shall be nothing but a single private dwelling with the necessary outbuildings erected on each lot." Defendant became the owner of the westerly ten feet of lot 50 and the easterly forty feet of lot 51; the remaining twenty feet of lot 51 and the whole of lot 52 adjoining lot 51 on the other side became the property of plaintiff. Defendant being about to build a dwelling on the fifty feet owned by him, plaintiff sought to enjoin such building as being in violation of the restriction. *Held,* (Brooke, Kuhn, and Bird, J. J. dissenting) that injunction should be denied. *Guan* v. *Fitzpatrick,* (Mich. 1918), 168 N. W. 1007.

The majority of the court seemingly content themselves with the observation that on the facts there would be only one dwelling on lot 51, that the terms of the restriction will thus be in fact observed, and that therefore equity should not give plaintiff the relief asked for. Suppose lot 51 or any lot in the restricted district had been subdivided in ownership into two thirty foot lots, and the owner of one of these had started to build thereon, would the prevailing judges refuse relief? Suppose the two owners had started the erection of dwellings simultaneously, which one, if either, would the learned judges enjoin? If they adjoined neither the result would be two houses on the one sixty foot lot, clearly contrary to the intent and language of the restriction; if they enjoined both, then either the lot would have to remain vacant or one would have to buy out the other or so much of his thirty foot lot as to leave it physically impossible to get a house erected on it. The majority of the court, it is submitted, failed to attend sufficiently to the terms of the restriction. "Each lot" meant what? It would seem wholly clear that each sixty foot lot was meant. It seemed to have been felt that it would be a hardship upon defendant to have to buy up the remainder of the lot or to get the consent of plaintiff. But how can that be if, as must be assumed, the defendant bought his portion with notice of the restriction? *Cf. Walker* v. *Renner,* 60 N. J. Eq. 493.

CARRIERS—CUMMINS AMENDMENT AS TO LIMITATION OF LIABILITY.—Household goods were boxed so as to be hidden from view, under a bill of lading limiting liability to $10 per 100 lbs., at a freight charge based on such valuation. The goods weighed 480 lbs. and were destroyed by fire. A judgment for $565 was affirmed in *Thompson* v. *Great Northern Ry. Co.* (Ld.), 174 Pac. 607. The development of the carriers liability may be found in 8 MICH. L. REV. 531, 9 MICH. L. REV. 233, 11 MICH. L. REV. 460, 588, 13 MICH. L. REV. 590, 15 COL. L. REV. 399, 475. Hardly had the Supreme Court finally upheld limitations based on the tariff rates on file as required by law, no matter what the value of the goods, and regardless of whether the actual value

was known to the carrier, *Geo. N. Pierce Co.* v. *Wells, Fargo & Co.* 236 U. S. 278, 10 MICH. L. REV. 317, 13 *ib.* 570, when ten days later the Cummins Amendment, to the Carmack Amendment to the Hepburn Act was signed by the President. Its intent was to prevent the carrier from escaping liability for the actual value of goods injured or lost by its default. Less than a year and a half later the Amendment of August, 1916, modified the Cummins Amendment, but meantime a few cases had arisen and reached the courts of last resort. In New York it had been decided the Cummins Amendment had not affected shipments of goods hidden from view by their wrappings. *D'Utassy* v. *Barrett,* 157 N. Y. S. 916, affirmed, 219 N. Y. 420, in which the goods were alleged to have been stolen by employees of the carrier, *Granberry* v. *Taylor,* 159 N. Y. S. 932, in which the goods were lost. In both cases a $50 valuation was held good. In *McCormick* v. *Southern Express Co.* (W. Va.) 93 S. E. 1048 the shipper, nothwithstanding an express receipt limiting liability to $5 and a tariff based on that valuation, was allowed to recover $300 for a "dark Cornish gamecock of fine breed." The cock was in a box covered with slats. In the instant case the goods were hidden from view, but the shipper told the agent they were household goods. The court held that under these circumstances the agent was entitled to fix a value and charge a rate commensurate with the risk, and could not rely on a value stated by the shipper. Under the Cummins Amendment the carrier might have limited liability by having the shipper "state in writing the value of the goods."

That there are limits to the effect of liability limitations in a published tariff on file with, and therefore presumptively approved by, the Interstate Commerce Commission is well brought out in *Boston & Maine Ry.* v. *Piper,* 38 S. Ct. 354. The bill of lading, and tariff sheets, contained the stipulation that liability from unusual delay and detention, caused by the carrier's negligence, should be limited to the amount actually expended by the shipper for food and water while so detained. The court held this to be no limitation of the amount of recovery under an agreed valuation, but an attempt to escape "liability for negligence by a contract which leaves practically no recovery for damages resulting from such negligence." It is submitted that such was the precise effect of the limitation upheld in *Geo. N. Price Co.* v. *Wells, Fargo & Co., supra,* in which a recovery of $50 was allowed for an $1800 car-load of automobiles. The decision in the instant case seems to be correct, and hence the other should be wrong. See 13 MICH. L. REV. 590.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE.—Plaintiff, an Ohio corporation, sued on a contract made in Michigan with defendants, a Michigan corporation. It was contended that the contract was void because a Michigan statute provided that a foreign corporation, not authorized to do business in Michigan, could not make a valid contract, in Michigan, and the plaintiff had not been so authorized. *Held,* the making of the contract was itself interstate commerce, and therefore outside the power of the state. *American Distributing Co.,* v. *Hayes Wheel Co.,* (March, 1918), 250 Fed. 109.

The contract was one by which the plaintiff undertook to act as agent of